

MHLA090019552013



Reg. Civil Suit No. 498 of 2013
(Vasant Vs. Ashok and ors.)

ORDER BELOW EXH.98
(Passed on 20.09.2024)

1. This is an application moved at the instance of LRs of deceased plaintiff and thereby sought for their bringing on record in the name of their deceased father.
2. Perused the application and say filed thereon by opponents overleaf the applications. Perused the record. Heard arguments.
3. By way of this application, it is the case of the applicants that on 05.08.2024 the plaintiff has left for heavenly abode. According to them, they are the only LRs of the deceased plaintiff. The suit is posted for evidence. The right to sue survives therein. Hence, prayed to allow the application.
4. Shri. B.V. Patil, learned advocate for the defendants has opposed the application vide his say overleaf the application. According to him, the instant application nowhere falls under the provisions of Order XII Rule 2 of the Code of Civil Procedure, 1908. The instant application is not maintainable. Hence, prayed for rejection.
6. Perusal of the application in juxtaposition with the say thereon reveals that the instant application is moved under the provisions of Order XII Rule 2 of the Code. The learned advocate for the defendants has taken strong exception to the moving of this application under this specific provision. It is trite that the provision under which the application is moved, should be mentioned correctly and it is legitimate expectation as well. However, it is stated that not only the provision should be gone through but

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it should be read as a whole. Reading the application as a whole clarifies the intention of the applicants more particularly on the point what they wants from the Court. The contents of the application directs to the provision of Order XXII Rule 3 of the Code. Thus, it is observed that mere wrong mentioning of provision shall not be a ground to reject the application at the threshold. Hence, I find no merits in the arguments advanced by the learned advocate in that regard.

7. Now I begin to consider this application. Admittedly the suit was instituted by Vasant Kishanrao Ghonse alone. Out of the applicants, one is his widow whereas other two are daughters and rest one is his son. It is obvious that the right to sue survives in them. The suit is posted for evidence. In case of sole surviving plaintiff when the right to sue survives in the applicants, they needs to be made a party to the suit and shall proceed with the suit. Further, perusal of record reveals that the instant application is moved on 31.08.2024 i.e. within one month from the date of demise of the plaintiff. Thus, it is well within limitation as well. In this backdrop, the application needs to be allowed. Hence, allowed. Order accordingly.

(Bhalchandra R. Zende)
4th Jt. Civil Judge (J.D.),
Udgir.

Date : 20.09.2024